IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9500 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T C

Versus

UMASHANKER R TANDEL

Appearance:

1. Special Civil Application No. 9500 of 1992

MR HARDIK C RAWAL for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/04/2002

ORAL JUDGEMENT

Heard learned advocate for the petitioner. Notice of rule issued by this court has been served upon the respondent workman but the respondent has not remained present before this Court either in person or

through an advocate. By way of this petition, the petitioner has challenged the award made by the labour court concerned in Reference No. 543 of 1989 dated 22nd January, 1992 wherein the labour court has granted reinstatement with continuity of service without back wages for the intervening period. This petition was admitted by this Court by issuing rule on 28.12.1992. No interim relief has been granted by this Court while admitting this petition and, therefore, naturally, the respondent workman must have been reinstated in service since 1992.

During the course of hearing, learned advocate Mr. Raval appearing for the petitioner corporation has submitted that at the time of checking, five and half passengers were found without tickets though fare was not recovered. He has further submitted that looking to the past record of the respondent workman which is at annexure-B alongwith the award, the labour court has committed error in granting reinstatement to the respondent workman and, therefore, interference of this Court is necessary.

I have considered the submissions made by Mr. Raval. I have also perused the award made by the labour court. Before the labour court, the respondent has filed the purshis at Exh. 25 and, thereby, has not challenged the legality, validity and propriety of the departmental inquiry. Upon perusal of the award, it appears that over and above that, the workman has also not claimed the back wages for the intervening period. Before the labour court, no oral evidence was led by the either side. The labour court has, after considering the past record as well as the length of service, has come to the conclusion that the respondent has not recovered the fares from the passengers and, therefore, there is some negligence on the part of the respondent workman and in view of these facts, powers under section 11-A of the Industrial Disputes Act, 1947 were exercised by the labour court in favour of the respondent workman by granting reinstatement with continuity of service without back wages for the intervening period. In such a situation, according to my opinion, the award made by the labour court is supported by cogent and convincing reasons. The labour court, after considering the misconduct in question, was of the view that the punishment imposed by the corporation was harsh and excessive and, therefore, in exercise of the powers vested in it under section 11-A of the I.D. Act, 1947, the labour court has granted reinstatement with continuity of service without back wages for the intervening period. Mr. Raval has not

been able to point out any infirmity in the award made by the labour court. He has also not been able to point out that the findings recorded by the labour court are perverse or that the labour court has committed any jurisdictional error and/or procedural irregularity. Therefore, no interference is required by this Court in exercise of the powers under Article 226/227 of the Constitution of India.

Accordingly, this petition is rejected. Rule is discharged. There shall be no order as to costs.

11.4.2002. (H.K. Rathod,J.)

Vyas